

Thomas-Jensen Affirmation

Exhibit # 94

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND**

STATE OF NEW YORK, et al.,

Plaintiffs,

v.

DONALD TRUMP, IN HIS OFFICIAL CAPACITY
AS PRESIDENT OF THE UNITED STATES, et al.,

Defendants.

C.A. No. 1:25-cv-00039

**DECLARATION OF SCOTT MELVIN IN SUPPORT OF PLAINTIFFS' MOTION FOR A
PRELIMINARY INJUNCTION**

I, Scott Melvin, hereby declare:

1. I am the Executive Deputy Commissioner of the New York State Department of Labor (NYSDOL) and have nearly 30 years of government experience, including 11 years at NYSDOL. I began my tenure with NYSDOL as a Special Assistant to the Commissioner in 2014, advanced to Chief of Staff in 2016, and became Acting Executive Deputy Commissioner in 2020, followed by my appointment to my current role in 2021. I am responsible for the comprehensive management of NYSDOL's day-to-day operations and spending, overseeing 14 distinct divisions and offices within NYSDOL, including the Workforce Development, Unemployment Insurance, and Worker Protection divisions.

2. NYSDOL is an executive state agency established pursuant to Article 2 of the New York State Labor Law and employs approximately 3,200 people in offices across the State of New York.

3. NYSDOL's 2024-2025 enacted budget is approximately \$1 billion to deliver federal and state programs related to administering unemployment insurance, engaging in workforce development, and enforcing the New York State Labor Law. Of this \$1 billion, the source of \$868 million is federal funding (approximately 85%) and the remaining \$156 million is state funding (approximately 15%).

4. The majority of the federal funding administered by NYSDOL is awarded on an annual basis as a formula allocation (annual allocation). The amounts of the annual allocations are determined by applying the Congressionally authorized allocation for the program to the formula set forth in federal law.

5. Additional grant funds are received by NYSDOL based on bids submitted in responses to federal grant solicitations (additional allocations). The amounts of any additional allocations are based upon the terms and conditions set forth in the Funding Opportunity Announcement issued by the federal agency authorized by Congress to administer the program funds.

6. For both annual allocations and additional allocations, NYSDOL receives a Notice of Award from the responsible federal agency. Upon award, funds are made available to NYSDOL in the federal Payment Management System (PMS). Funds in the PMS can be drawn down to reimburse NYSDOL for the expenses incurred in the operation of the corresponding programs.

7. NYSDOL also administers annual allocations and additional allocations that are awarded to local governments as well as other private grantees. These allocations are paid out on a reimbursement basis (meaning that the grantee receives reimbursement for actual costs that are incurred and paid for) or on a draw down basis provided that the draw is for expenses to be incurred within five days of the request for funds.

8. On NYSDOL's behalf, the NYS Office of the State Comptroller (NYSOSC) requests payments for ongoing, approved allocations that have been awarded to NYSDOL through PMS each business day, and payments are generally made on the following business day. Payments to NYSDOL through PMS average approximately \$2.3 million per day.

Federal Funding Freeze

9. On January 27, 2025, the federal Office of Management and Budget issued a memorandum that paused payments of federal financial assistance, including payments to NYSDOL. The directive in the memorandum was effective at 5:00pm the following day, with no additional advance warning having been provided to affected payees.

10. On January 28, 2025, NYSDOL staff attempted to log in to PMS but were unable to access the system. NYSDOL received very limited information from the federal administration about the payment freeze on that day, and no update about when payments could be expected (attached as Exhibit A). PMS remained inaccessible for most of the day and NYSDOL did not receive the expected disbursement of \$2,529,230 in federal funds that was requested on January 27, 2025.

11. On January 28, 2025, NYSDOL received communications from local workforce development areas that were seeking guidance on what steps should be taken as a result of the payment pause. Specifically, the local areas were concerned that they would not be able to draw on annual allocations that were accounted for in their budgets. Several of the local workforce development areas expressed concern that they would not have sufficient funds to cover costs they would incur – including salaries for staff – if reimbursements or draw down requests were significantly delayed.

12. In response to the panic and confusion expressed by the local areas, NYSDOL scheduled an emergency meeting on January 28, 2025, with the directors of the 33 local workforce development boards that oversee the funds within the local areas. During the call, NYSDOL relayed the limited information it had received from the federal government and tried to provide reassurance during the uncertainty.

13. NYSDOL's access to PMS was briefly restored late in the business day on January 28, 2025. NYSDOL and NYSOSC were able to resume payment requests through PMS on January 29, 2025. The payment of federal funds that was expected on January 28, 2025, was received on January 29, 2025.

14. Nonetheless, the impact on NYSDOL of the sudden failure of the federal government to reimburse already committed and expended funds was potentially catastrophic. In the short term, NYSDOL may have been able to cover expenditures by supplementing state funds using limited reserves the agency has on hand. Grantees, including local governments, expressed concerns about their ability to rely on the funding that has been allocated and obligated by NYSDOL in accordance with the federal awards.

15. As outlined below, annual and additional allocations of funds received by NYSDOL provide important services to the residents and workers of NYS.

Significant Annual Allocations

16. NYSDOL administers many joint federal/state programs that are funded through annual allocations including, inter alia, the unemployment insurance program (UI), the Workforce Innovation and Opportunity Act (WIOA), the Wagner-Peyser Act and the Reemployment Services and Eligibility Assessment Grant (RESEA), the Jobs for Veterans State Grant (JVSG), and Occupational Safety and Health programs .

17. The UI program, authorized by the Federal Unemployment Tax Act and Social Security Act, provides individuals who become unemployed through no fault of their own with supplemental income while they search for new employment. In New York, the program provides weekly UI assistance benefits amounting to \$3 billion per year. While UI benefits are paid through a state-funded trust fund account that is held by the U.S. Treasury, NYSDOL received a \$187 million annual allocation from the U.S. Department of Labor (USDOL) to cover the costs of administering the UI program in 2024. Specifically, the funds are used to support the staff that necessary to operate a program that conforms with federal law. UI staff ensure that benefits are paid out properly, prevent fraud, represent NYSDOL in hearings, and engage in collections activities for funds owed to the state trust fund account.

18. WIOA Title I funding, authorized by 29 U.S.C. §§ 3161 – 3181, is used by NYSDOL to provide services to youth, adults, and dislocated workers through 95 Career Centers across the state. NYSDOL received an annual allocation of \$236.8 million for 2024, with approximately \$61 million reserved for allocations to the 33 local workforce development areas throughout the state. The funding supports NYSDOL and local-level front-line staff, as well as an extensive network of local youth service providers, to provide career development, training, and support to businesses – including direct grants to cover costs associated with businesses hiring and training unemployed and underemployed individuals within the local areas. The WIOA program served over 123,000 adults, 167,000 dislocated workers, and 7,800 youth in New York in 2022.

19. NYSDOL administers workforce programming funded by the Wagner-Peyser Act and the RESEA grant in 65 Career Centers across the state. NYSDOL received an annual allocation of \$39 million for Wagner-Peyser and nearly \$38 million for RESEA in 2024. NYSDOL staff administering these programs provide continuous services to unemployed customers, from

providing meaningful assistance with customers who need to file for UI benefits, to providing job search assistance, career counseling, and referrals to partners.

20. The JVSG program is authorized by 38 U.S.C. § 4102SA(b)(5) and funds help NYSDOL provide special assistance to veterans and eligible persons. NYSDOL's annual allocation for this program for 2024 is approximately \$9 million. Funding is determined by a ratio that reflects the total number of veterans seeking employment with the state. JVSG staff are assigned to the Career Centers throughout the state where veteran customers receive specialized assistance, often from a veteran employed by NYSDOL, to help address the unique barriers and challenges that are faced by servicemembers who are returning to the civilian workforce. Services include, but are not limited to, a comprehensive assessment, an individual employment plan, and customized job search support.

21. NYSDOL administers the Public Employee Safety and Health program as a partial consent state under the Occupational Health and Safety Act (OSHA; 29 U.S.C. section 651, et seq). Under the state plan between NYSDOL and the federal government, NYSDOL enforces safety and health standards to ensure safe and healthy working conditions for all public sector employees, including police officers and firefighters. In order to effectively enforce OSHA safety standards, the federal government provided an annual allocation of \$4,140,600 for 2024. OSHA requires a 50% match of state funds, which NYS exceeded for 2024 with a \$6,647,954 appropriation.

22. NYSDOL also administers an On-Site Consultation Program, which provides free and confidential safety and health consultative services to small- and medium-sized businesses operating in high-hazard industries or performing high-hazard activities to help businesses avoid

the staggering costs associated with a workplace injury. USDOL provides 90% of this program's funds, which were \$3,666,200 in 2024.

23. Additionally, NYSDOL administers the Mine Safety Training Program, which provides high quality safety instruction to mine employees in New York. The program is partially funded by the Mine Safety and Health Administration (MSHA), which awarded New York \$347,407 for 2024.

24. None of these annual allocations are paid to NYSDOL in lump sums. NYSDOL accesses these funds throughout the year using the PMS draw down process.

Additional Allocations/DEI Executive Order Concerns

25. NYSDOL regularly seeks additional allocations by applying for individual grant opportunities.

26. USDOL awarded NYSDOL specific grant funds that may be in jeopardy following the President's Executive Orders entitled *Ending Radical and Wasteful Government DEI Programs and Preferencing* (issued January 20, 2025) and *Ending Illegal Discrimination and Restoring Merit-Based Opportunity* (issued January 21, 2025). For example, USDOL awarded New York a \$9.1 million Equitable Access to State Unemployment Insurance Systems grant as part of \$260 million available to states through the American Rescue Plan Act. The grant is to fund projects aimed at preventing race, ethnicity, language proficiency, literacy, disability status, socioeconomic status, geographic location or other systemic barriers from impeding access to unemployment insurance benefits for people in need.

27. On January 22, 2025, USDOL issued Training and Employment Notice 21-24 (attached as Exhibit B) to states indicating more guidance would follow "on specific activities that

are allowable and unallowable” under USDOL federal grants. No guidance has been communicated yet.

28. To date, NYSDOL has expended approximately \$2.3 million of the \$9.1 million award. The work NYSDOL is doing is focused on modernizing the UI delivery system to assist people with limited English proficiency or those who are visually or hearing impaired. This work is particularly important because NYSDOL was subject to a federal judicial consent decree for decades based on historical failures to provide non-English speaking claimants sufficient access to UI benefits in violation of the federal Social Security Act.

29. There is still information about this grant accessible on USDOL’s website but a press release (attached as Exhibit C) about awarding funds to NYS include a banner warning readers that as of January 20, 2025, this information “may be out of date or not reflect current policies.”

Conclusion

30. If a federal payment freeze were to continue for any significant amount of time, NYSDOL’s ability to continue providing essential services to employees, employers, job seekers, and others would be seriously jeopardized. This includes administering UI benefits to out-of-work New Yorkers; providing in-person and virtual services to unemployed and underemployed individuals seeking to obtain gainful employment; assisting businesses through training support grants, safety and health consultations, and connecting with job seekers. Finally, work performed by NYSDOL staff to ensure the integrity of the UI system and the safety of public employees – including police officers and firefighters – would have to be substantially decreased.

31. NYSDOL provides vital services to connect workers with jobs and resources to obtain skills for employment, assist businesses with obtaining and training staff, and ensure that

workers are protected physically and financially. The loss of access to these services would have a substantial impact on the people of NYS.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed this 5th day of February, 2025, in Albany, New York.

A handwritten signature in black ink, appearing to read 'S. Melvin', is positioned above a horizontal line.

Scott Melvin
Executive Deputy Commissioner
New York State Department of Labor

MELVIN EXHIBIT A

From: [REDACTED] (LABOR)
To: [REDACTED] (LABOR); [REDACTED] (LABOR); [REDACTED] (LABOR)
Cc: [REDACTED] (LABOR)
Subject: FW: PMS
Date: Tuesday, January 28, 2025 1:05:35 PM
Importance: High

First news from a USDOL employee. OSHA on PMS system

Thanks

[REDACTED]
[REDACTED]

From: [REDACTED] OSHA [REDACTED]
Sent: Tuesday, January 28, 2025 1:00 PM

[REDACTED]

@labor.ny.gov>

Cc: [REDACTED] - OSHA [REDACTED]
Subject: PMS
Importance: High

ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.

Grantees, Good Afternoon:

As a result of the Presidential Executive Order on pausing federal grant related payments, PMS is currently down. OSHA is aware and seeking additional guidance. We will promptly notify you when we have additional information to share. Currently there is no timeframe for when the system will be back online.

In the interim, note the new hours and the message regarding delays on funding grants on the

PMS website: ([Home | Payment Management Services](#))

- **Effective immediately, PMS is only available during the hours of 9:00 AM to 4:00 PM EST Monday through Friday. The limited hours are in effect until a further notice.**
- **PAYMENT DELAYS: Due to Executive Orders regarding potentially unallowable grant payments, PMS is taking additional measures to process payments. Reviews of applicable programs and payments will result in delays and/or rejections of payments.**

We recommend contacting the PMS helpdesk directly should you have questions regarding your specific grant assuming they have any additional information to provide, 1-877-614-5533 ([PMS Help Desk | HHS PSC FMP Payment Management Services](#)).

Thank you for your patience while we await additional information.


Enjoy Your Day!



MELVIN EXHIBIT B

TRAINING AND EMPLOYMENT NOTICE	NO . 21-24
	DATE January 22, 2025

TO: STATE WORKFORCE AGENCIES
STATE WORKFORCE LIAISONS
STATE WORKFORCE DEVELOPMENT BOARDS AND STAFF
LOCAL WORKFORCE DEVELOPMENT BOARDS AND STAFF
AMERICAN JOB CENTER DIRECTORS
ETA COMPETITIVE GRANTEEES
COMMUNITY COLLEGES AND TRIBAL COLLEGES
STATE APPRENTICESHIP AGENCIES
JOB CORPS CENTER DII

FROM: MICHELLE PACZYNSKI 
Acting Deputy Assistant Secretary

SUBJECT: Immediate Implementation of Executive Orders “Ending Radical and Wasteful Government DEI Programs and Preferencing” and “Ending Illegal Discrimination and Restoring Merit-Based Opportunity”

1. **Purpose.** To notify all Employment and Training Administration (ETA) recipients about changes ETA is making to federal financial assistance awards to prohibit activities described in President Trump’s Executive Orders (EOs) titled, “Ending Radical and Wasteful Government DEI Programs and Preferencing,” issued on January 20, 2025, and “Ending Illegal Discrimination and Restoring Merit-Based Opportunity,” issued on January 21, 2025.
2. **Action Requested.** Effective immediately, all recipients of federal financial assistance awards are directed to cease all activities related to “diversity, equity, and inclusion” (DEI) or “diversity, equity, inclusion, and accessibility” (DEIA) under their federal awards, consistent with the requirements of the EOs titled, “Ending Radical and Wasteful Government DEI Programs and Preferencing,” issued on January 20, 2025, and “Ending Illegal Discrimination and Restoring Merit-Based Opportunity,” issued on January 21, 2025. Additional guidance will be provided.
3. **Summary and Background.**
 - a. Summary – This notice shares recent EO requirements to eliminate DEI activities that constitute illegal discrimination or preferences.
 - b. Background – President Trump has issued several EOs, which are available at <https://www.whitehouse.gov/presidential-actions/>, including the EOs titled, “Ending Radical and Wasteful Government DEI Programs and Preferencing,” issued on January 20, 2025, and “Ending Illegal Discrimination and Restoring Merit-Based Opportunity,”

**EMPLOYMENT AND TRAINING ADMINISTRATION
U.S. DEPARTMENT OF LABOR
WASHINGTON, D.C. 20210**

issued on January 21, 2025. All federal agencies are taking steps to implement these EOs, and promptly notifying all federal awardees. ETA, like all federal agencies, will provide further guidance on specific programs and activities within those programs.

4. **Ceasing DEIA activities.** All awardees must immediately cease all award activities related to DEI or DEIA. All other award activities should continue.

ETA will issue further guidance on specific activities that are allowable and unallowable.

5. **Inquiries.** Please direct inquiries to the appropriate Regional Office.

6. **References.**

- Executive Order, “Ending Radical and Wasteful Government DEI Programs and Preferencing,” January 20, 2025, available at <https://www.whitehouse.gov/presidential-actions/2025/01/ending-radical-and-wasteful-government-dei-programs-and-preferencing/>.
- Executive Order, “Ending Illegal Discrimination and Restoring Merit-Based Opportunity,” January 21, 2025, available at <https://www.whitehouse.gov/presidential-actions/2025/01/ending-illegal-discrimination-and-restoring-merit-based-opportunity/>.

7. **Attachments.** N/A

MELVIN EXHIBIT C



U.S. DEPARTMENT OF LABOR

Please note: As of 01/20/2025, information in some news releases may be out of date or not reflect current policies.

News Release

US DEPARTMENT OF LABOR AWARDS \$9.1M TO NEW YORK TO PROMOTE EQUITABLE ACCESS TO STATE'S UNEMPLOYMENT INSURANCE SYSTEM

Funding made available through the American Rescue Plan Act

WASHINGTON – To help identify and address barriers workers face regarding access to state unemployment insurance benefits, the U.S. Department of Labor today announced the award of \$9.1 million in American Rescue Plan Act funding to the New York State Department of Labor.

The equity grant will fund projects aimed at preventing race, ethnicity, language proficiency, literacy, disability status, socioeconomic status, geographic location or other systemic barriers from impeding access to unemployment insurance benefits for people in need. The department's [Employment and Training Administration](#) administers the grant.

Projects supported by the funds will provide translation services and improve mobile-based capabilities to better respond to underserved communities' other needs. They will also simplify instructions for all applicants, thereby reducing errors that can cause improper payments.

The award corresponds with the department's August 2021 announcement of the availability of [up to \\$260 million in grants for states to promote equitable access to unemployment insurance benefits](#). To date, the department has announced \$166 million in funds awarded to 32 states and the District of Columbia.

Agency: Employment and Training Administration

Date: January 12, 2023

Release Number: 23-45-NAT

Media Contact: Monica Vereen

Phone Number: [REDACTED]

Email: [REDACTED]@dol.gov

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